Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

WENDELL D. BELDEN

Petitioner,

v.

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, an Oklahoma Unit Ownership Estate, ISLAND PARK LIMITED PARTNERSHIP, CORLETT ENTERPRISES, L.L.C., An Oklahoma Limited Liability Company, and CLIFF WOODBURY

On Petition For Writ Of Certiorari
To The Supreme Court of Oklahoma

PETITION FOR WRIT OF CERTIORARI

Mark E. Hardin
Counsel of Record
5110 S. Yale
Suite 100
Tulsa, OK 74135
(918) 492-5541

Questions Presented for Review

Following a dispute over the placement of a boat dock, Petitioner reopened a Bankruptcy in order to purchase a waterfront tract and three interior tracts that were property of the estate but had not been listed or distributed in the Bankruptcy. The Respondents appeared in the Bankruptcy, filed two formal Objections to the sale, and claimed an interest by adverse possession. However, at the Bankruptcy Hearing, Respondents withdrew their objections and prepared an order allowing the sale to proceed. Subsequently, Respondents sought and obtained quiet title to a portion of the property in State Court. The State Court also sua sponte granted Respondents a gratuitous easement over the remaining tracts of Petitioner's land. The Questions to be presented are as follows:

1. Whether a State Court has jurisdiction to hear a quiet title action subsequent to the entry of a Federal Court Order in which the same parties previously consented to the sale of the same property.

2. Whether the State Court violated Petitioner's right to due process by awarding a gratuitous easement across Petitioner's land sua sponte without allowing Petitioner an opportunity to be heard?

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PETITION FOR CERTIORARI

This Petition for Certiorari seeks this Court's review of the judgment of the Oklahoma Supreme Court, who through its Court of Civil Appeals, has decided an important federal question in a way that conflicts with relevant decisions of this Court and of the Tenth Circuit Court of Appeals.

OPINIONS BELOW

1. The Order Authorizing Trustee's Sale of Property of the Bankruptcy Estate was prepared by Respondents and was entered by the Bankruptcy Court on July 2, 1998. It is unpublished, but is reprinted in Appendix "A" attached hereto.

2. The Opinion of the District Court of Delaware County was entered on February 7, 1999, and is unreported. However, the opinion is reprinted in Appendix "B" attached hereto.

3. The Trial Court Opinion was affirmed by the Oklahoma Court of Civil Appeals, Division 4, by Opinion entered on July 18, 2000. The Court of Appeals Opinion is also unreported, but is reprinted in Appendix "C" attached hereto.

4. The Court of Civil Appeals denied Petitioners request for a rehearing by Order dated September 25, 2000. The Order is unreported, but is reprinted in Appendix "D" attached hereto.

5. The Oklahoma Supreme Court's January 18, 2001, Order denying Petitioner's Writ for Certiorari is also unpublished but is reprinted in Appendix "E" attached hereto.

JURISDICTION

1. The Order of the Oklahoma Supreme Court denying Petitioner's Writ of Certiorari to the Oklahoma Court of Civil Appeals was entered on January 18, 2001, and is a final order.

2. The question of the State Court's jurisdiction to effectively nullify an Order of a United States Bankruptcy Court was raised by pre-trial motion. The issue was further raised on appeal as evidenced by the Court of Appeals Opinion attached hereto as Appendix C (See Pages C4-C6).

3. The question of whether the State Court violated Petitioner's due process rights by awarding a gratuitous easement sua sponte was not raised in the Trial Court because Petitioner was not given notice or opportunity to be heard on this issue. Petitioner did raise this issue on appeal as is evidenced by the Court of Appeals Opinion attached hereto as Appendix C (See Pages C10-C11).

4. The jurisdiction of this Court is invoked under the provisions of 28 U.S.C. §1257(a). Petitioner further claims jurisdiction is proper pursuant to *Rivit v. Regions Bank of Louisiana*, 522 U.S. 470, 478 (1998), in which this Court held that a defense of claim preclusion by reason of prior federal judgment is a defensive plea properly raised in State Court and the State Court disposition is subject to this Court's ultimate review.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the U.S. Constitution, provides that:

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Petitioner is a unit owner at Island Park, an Oklahoma Unit Ownership Estate, located on the Grand Lake of the Cherokees, in Delaware County, Oklahoma. Respondents are the Board of Directors of the Council of Unit Owners of Island Park (Homeowners' Association), Island Park Limited Partnership (Developer), Corlett Enterprises, LLC, (Developer Corlett), and Cliff Woodbury (Neighboring Landowner). The issues relating to the Neighboring Landowner were not appealed and will not be discussed in this Petition.

Developers made an agreement with Homeowner's Association and the individual unit owners to move and add boat docks at Island Park. In 1997 a dispute arose between Developer Corlett and Petitioner over the placement of a dock. As a result, the land records were researched and it was discovered that none of the parties actually owned record title to a triangle of waterfront land and several interior tracts of land that were used partially as a roadway. Record title to the triangle and the interior tracts was held by Charles Davis (Davis), who did not include those tracts in his 1986 Bankruptcy.

Developer Corlett obtained an invalid quitclaim deed from the Debtor, Davis, who was also Corlett's former employer. Developer Corlett used the invalid quitclaim deed to obtain a court order allowing the removal of Petitioner's leased dock from the waterfront triangle.

However, because the tracts were never distributed in the 1986 Bankruptcy, Petitioner reopened the Bankruptcy in order to purchase the tracts from the Bankruptcy Estate. The Bankruptcy Trustee served proper notice of his intent to sell the property. Developers and Homeowner's Association (hereinafter referred to collectively as "Respondents") appeared in Bankruptcy Court and filed a formal objection claiming rights to the land through adverse possession.

Thereafter, the Bankruptcy Trustee served a new notice stating that he intended to sell the property to Plaintiff without warranty of any kind. Again, Respondents filed a formal objection claiming adverse possession and further claiming that the legal description contained an error. The Trustee agreed to correct the legal description.

Respondents appeared at the hearing on their Objection to the Trustee's Motion to Sell the property. Petitioner also appeared at the hearing and was prepared to argue that the 1986 Davis Bankruptcy interrupted the Respondents' adverse possession claim.

At the Bankruptcy hearing, Respondents withdrew their objection, abandoned their claim and allowed the sale to proceed. The Bankruptcy Court entered an agreed Order allowing the sale. Although Respondents prepared the agreed order, Respondents did not expressly reserve the right to litigate their

abandoned claims in a second forum. However, shortly thereafter, Respondents sued Petitioner in State District Court to quiet title to the same property.

In the State Court action, Petitioner claimed that the Trial Court did not have jurisdiction because the same matter between the same parties had been previously before the Federal Bankruptcy Court. Petitioner also informed Respondents that the filing of the State Court case was a violation of the Automatic Stay provided by 11 U.S.C. §362. Respondents sought relief from the Automatic Stay, and Petitioner agreed to have the stay modified. However, Petitioner did not abandon his claim that the State Trial Court lacked jurisdiction to hear the suit.

In pre-trial Motions, the State Trial Court agreed with Petitioner and held that the Respondents' adverse possession claim was invalid due to the Davis Bankruptcy. The trial Court also ruled that Davis' deed to Developer Corlett was invalid because of the Bankruptcy. However, the trial court assumed jurisdiction and just days before trial, the Court allowed the Respondents to amend their Petition to add a surprise claim for reformation of deed.

Although Bankruptcy Trustees often use quitclaim deeds, the Trial Court found that Petitioner could not have been a bona fide purchaser because he acquired the property by quitclaim deed. The Trial Court reasoned that because Petitioner received a quitclaim deed from the Trustee, he knew or should have known that Respondents continued to assert a claim to the property. The Trial Court effectively ruled that Respondents' invalid, withdrawn, and abandoned claims defeated Petitioner's "bona fide purchaser" status.

After allowing Respondents to add a surprise claim, the Trial Court reformed several deeds to which none of the Respondents were grantees. The Court awarded the most valuable tract, the waterfront triangle, to the Original Developer. Developer Corlett now claims title through the Original Developer.

The Trial Court also awarded one of the interior tracts of land to Developer Corlett and Petitioner jointly and awarded two other interior tracts to Petitioner individually. However, the Trial Court sua sponte gave all parties a gratuitous easement over all of Petitioner's tracts, making them virtually worthless. Petitioner was not given notice or an opportunity to present any evidence of other means of access.

Petitioner appealed to the Oklahoma Court of Civil Appeals and the Trial Court was affirmed. The Court of Appeals held that the doctrines of issue and claim preclusion did not apply because Respondents' claims were not "actually litigated" in Bankruptcy Court. The Court of Appeals also held that Petitioner could not be a bona fide purchase because he received a quitclaim deed. Petitioner's request to the Court of Appeals for a rehearing was denied. Petitioner's Writ of Certiorari to the Oklahoma Supreme Court was denied.

REASONS FOR GRANTING THE WRIT

The State Court exceeded its jurisdiction in an attempt to reverse the Order of a Federal Bankruptcy Court. The State Court decisions conflict with decisions of the Tenth Circuit Court of Appeals and the U.S. Supreme Court. The State Court also violated Petitioner's Due Process rights by awarding a gratuitous easement across Petitioner's land without affording Petitioner notice and opportunity to be heard.

Proposition 1: A PARTY WHO CONSENTS TO A FEDERAL COURT ORDER ALLOWING THE SALE OF PROPERTY TO ANOTHER, IS BARRED FROM SEEKING TITLE TO THE SAME PROPERTY IN A SUBSEQUENT STATE COURT QUIET TITLE ACTION AGAINST THE SAME PURCHASER.

1(a): The State Court lacked jurisdiction even after the Automatic Stay was lifted.

Respondents may argue that Petitioner waived any jurisdictional arguments when Petitioner agreed to the lifting of the Bankruptcy Automatic Stay. However, after the State Court proceeding was filed, Petitioner could not have removed the case back to Federal Bankruptcy Court. Claim Preclusion by reason of a prior Federal Judgment is a defensive plea that does not provide a basis for removal. Such a defense is properly made in the State proceedings, and the State Court's disposition of it is subject to the United States Supreme Court's ultimate review. *Rivit v. Regions Bank of Louisiana*, 522 U.S. 470, 478 (1998).

1(b): The State Courts have wrongly held that the Bankruptcy Court Consent Order cannot be considered a judgment on the merits.

Respondents filed two formal objections in Bankruptcy Court and those objections triggered a hearing at which Respondents were present. The Petitioner was prepared to proceed with the hearing and allow Respondents to present their adverse possession claim. When it finally became clear to Respondents that they would not be successful on the adverse possession claim in Bankruptcy Court, Respondents withdrew their objection, abandoned

their claim, and consented to the sale. Respondents did not seek a stay of the sale nor did they request the Federal Bankruptcy Court to defer to a State Court proceeding. Only after abandoning their claims and allowing the sale to proceed, did Respondents seek a more favorable forum in State District Court.

The Court of Appeals erred when it found that Respondents were not estopped from bringing a second suit because the claims of adverse possession and reformation of deeds were not "actually litigated" in the first suit. Likewise, the Oklahoma Supreme Court erred by refusing to hear the appeal and reverse the lower Courts' decisions. The State Courts have wrongly held that the Bankruptcy Court Consent Order cannot be considered a judgment on the merits.

The Tenth Circuit Court of Appeals has held that a Bankruptcy Court's Order entered by agreement rather than litigation has the same effect as a District Court's Judgment on the merits. *In re Laing*, 31 F.3d 1050, 1051 (10th Cir. 1994). The Court reasoned that even though the debtor did not actually argue and present evidence in an earlier proceeding, the debtor could have objected and avoided the binding effect of the Court's Order in the earlier proceeding. *Laing* at 1051. Additionally, the Court held that because the parties were the same in both proceedings, the debtor could not argue an issue which ***was or could have been raised*** in the prior action. *Laing* at 1051 (emphasis added).

For an opposite argument see 50 C.J.S. §820 which says that a judgment is not conclusive on matters which were withdrawn or withheld from the litigation and were not required to be presented as part of the case or defense. However, 50 C.J.S. §820 further states that this rule does not render it permissible for a party to present issues for

determination in a case and then avoid the effect of an estoppel by withholding proof thereof. 50 C.J.S. §820.

The Bankruptcy Court Consent Order is equivalent to a final judgment on the merits. Furthermore, this Court has stated that the "doctrine of res judicata provides that when a final judgment has been entered on the merits of a case, it is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. *Nevada v. United States*, 463 U.S. 110, 129-130, 103 S.Ct. 2906, 2918, 77 L.Ed.2d 509 (1983), citing *Crommwell v. County of Sac*, 94 U.S. 351, 352, 24 L.Ed. 195 (1877). The Court further held that the final judgment puts an end to the cause of action, which cannot again be brought into litigation between the parties upon any ground whatsoever. *Nevada v. United States*, 463 U.S. 110, 129-130, citing *Commissioner v. Sunnen*, 333 U.S. 591, 597, 68 S.Ct. 715, 719, 92 L.Ed. 898 (1948). The Court recently repeated this holding in *Rivit v. Regions Bank of Louisiana*, 522 U.S. 470, 476-477 (1998).

1(c): A matter raised but not actually litigated can only be decided in a subsequent proceeding between the same parties if the matter was expressly reserved in the prior final judgment.

The Oklahoma Supreme Court has long held that by reason of res judicata and estoppel by judgment, a State Court action is barred by a prior Federal Court Judgment against the same party for the same relief. *Marshall v. Ford Motor Company*, 507 P.2d 912 (Okla. 1973).

However, Oklahoma Courts will allow matters not actually litigated to be decided in a subsequent proceeding if the matter is **expressly reserved** in a final judgment. See *Billy v. LaFlore County Gas & Electric*, 293 P. 1009 (Okla. 1930); and *Powell Bros. Truck Lines v. State ex rel. Green*, 61 P.2d 231 (Okla. 1936). Other Courts have also held that a party may expressly reserve in a consent judgment the right to relitigate some or all issues that would have otherwise been barred between the same parties. See *Epic Metals v. H.H. Robertson Company*, 870 F.2d 1574,1576 (Fed.Cir. 1989).

Furthermore, this Court has held that any alleged reservation must be discerned within the four corners of the consent decree and cannot be expanded beyond the decree's express terms. *United States v. Armour & Co.*, 402 U.S. 673, 681-83, 91 S.Ct. 1752, 1757-1758, 29 L.Ed.2d 256 (1971).

The Bankruptcy Consent Order clearly reflects that Respondents withdrew their objection to the sale of the property. The Oklahoma Courts impermissibly looked beyond the four corners of the Bankruptcy Consent Order and surmised that Petitioner must have known that he would be the subject of a State Court lawsuit when he purchased the property.

The Respondents in the case at bar prepared the consent decree, but failed to expressly reserve the right to litigate withdrawn and abandoned claims. Had Respondents attempted to make such a reservation, Petitioner would not have proceeded with the purchase but instead would have proceeded with an evidentiary hearing in Bankruptcy Court.

The Court of Appeals reviewed the Bankruptcy Court Consent Order and found that it was silent as to the "validity" of the Trustee's title. The Court

therefore found that Respondents were free to litigate that issue in State Court. This reasoning could is in direct opposition with the cases cited above which require a consent decree to **expressly reserve** the right to bring further litigation.

Proposition II: IT IS A VIOLATION OF DUE PROCESS RIGHTS FOR A STATE COURT TO AWARD A GRATUITIOUS EASEMENT ACROSS A PERSON'S LAND SUA SPONTE WITHOUT ALLOWING THAT PERSON AN OPPORTUNITY TO BE HEARD

The Trial Court awarded Petitioner two tracts of land and a one-half interest in another tract of land. Although none of the parties requested the Trial Court to consider an easement by necessity, the Trial Court awarded an easement to the Respondents and other surrounding landowners sua sponte and free of charge. The Trial Court's order made no provisions for maintenance of the road, but simply awarded a gratuitous easement.

The Trial Court based its decision on its independent viewing of the property, but did not support its decision with any facts. Furthermore, the Court granted a blanket easement over all three tracts of land, without allowing Petitioner to present evidence which may have established that parties such as the Homeowners' Association and the Developers own sufficient land to build and maintain their own road.

Additionally, Defendant was not allowed to present evidence that the other surrounding landowners may have access to their properties by other roadways. The State Court effectively gave away Petitioner's land without notice and opportunity in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

While it is axiomatic that under equity, a court may afford complete relief between the parties regardless of the specific relief requested, the Trial Court abused its authority by ruling on an issue not raised by the parties and without notice and an opportunity to present evidence on the issue.

Notice and opportunity lie at the heart of due process. The Oklahoma Supreme Court has held:

> Notice is a jurisdictional requirement and a fundamental element of due process. Due process requires adequate notice, a realistic opportunity to appear and the right to participate in a meaningful manner. The right to be heard is of little value unless a party is apprised of rights which may be affected by judicial process. Due process is violated by the mere act of exercising judicial power upon process not reasonably calculated to apprise interested parties of the pendency of an action. Lack of notice constitutes a jurisdictional infirmity.

Bailey v. Campbell, 862 P.2d 461, 469 (Okla. 1991).

Conclusion

This case is important because a State Court has impermissibly overturned the ruling of a Federal Court. A State Court does not have jurisdiction to hear an issue between the same parties that was previously the subject of a Federal Court order equivalent to a judgment on the merits. Respondents affirmatively and voluntarily presented their objections to the Federal Bankruptcy Court, but then chose to withdraw them.

This case would be different if Respondents had not objected to the Trustee's "sale without any warranties." However, Petitioners filed objections and triggered a hearing at which they were obligated to present all of their claims. At the Bankruptcy hearing, Respondents put Petitioner on notice that Respondents were withdrawing their claims.

If Respondents are allowed to forum shop by withdrawing claims so that they are not "actually litigated", future parties will be forced to actually litigate all issues that have been agreed to or withdrawn, or else face the possibility of litigation in a second forum. Litigating withdrawn or agreed upon issues would be a tremendous waste of judicial resources and would be patently unfair to the litigants who attempted to proceed in the proper forum only to be tricked into a consent decree without actual litigation.

Finally, the State Court completely disregarded Petitioner's due process rights by granting a gratuitous easement across Petitioner's land without affording Petitioner notice and opportunity to be heard. The easement granted sua sponte by the State Court consumes the land and is effectively a taking without notice.

WHEREFORE, the Petition for Writ of Certiorari should be granted.

Respectively Submitted,

Mark E. Hardin
Counsel of Record
5110 S. Yale, Suite 100
Tulsa, OK 74135
(918) 492-5541

APPENDIX "A"
THE BANKRUPTCY COURT ORDER

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

	)	**FILED**
	)	**98 JUL-2 PM 4:24**
IN RE:	)	**DOROTHY EVANS, CLERK**
	)	**U.S. BANKRUPTCY COURT**
CHARLES J. DAVIS,	)	**NORTHERN DISTRICT OF OKLA**
d/b/a Shangri-La,	)	
	)	Case No. 86-00345-M
	)	(Chapter 11)
Debtor.	)	

ORDER AUTHORIZING TRUSTEE'S SALE OF PROPERTY OF THE BANKRUPTCY ESTATE

On May 28, 1998, there came on for hearing before the Honorable Terrence L. Michael, United States Bankruptcy Judge, the Motion of Patrick J. Malloy, trustee, for an Order Authorizing Sale of Real Property, and the Objection thereto of Corlett Enterprises, L.L.C. and Island Park Homeowner's Association ("the Objectors"). The trustee, Patrick J. Malloy III, appeared personally; Corlett Enterprises, L.L.C. and Island Park Homeowner's Association appeared through their attorney, Sidney K. Swinson; and the prospective purchaser, Wendell Belden, appeared through his attorney, Donald A. Flasch. The Court, after hearing the statements of the attorneys, and upon the representation that the parties have reached a settlement and agree to the entry of this Order, finds:

1. This Court has jurisdiction over the parties and subject matter of this contested matter, pursuant to 28 U.S.C. §1334. This is a core proceeding under 28 U.S.C. §157(b)(2)(M).

2. Notice of this hearing has been given to parties in interest and this contested matter is properly before this Court.

3. The debtor, Charles J. Davis, filed his Voluntary Petition for Relief under Chapter 11 of the United States Bankruptcy Code on February 21, 1986. This case was closed on March 1, 1994, and was reopened on October 8, 1997, upon the entry of an Order Granting Motion to Reopen Case. The purpose for reopening this bankruptcy was to appoint a trustee to enable the trustee to administer certain real estate located in Delaware County, Oklahoma.

4. Included among the assets of this bankruptcy estate is the debtor's interest in certain real property located in Delaware County, Oklahoma, described in Exhibit A hereto, which was inadvertently not scheduled by the debtor in this bankruptcy case. At the time of his bankruptcy filing on February 21, 1986, the debtor owned, at least in part, record title to the subject property.

5. The trustee has agreed to sell and Wendell Belden has agreed to purchase all the bankruptcy estate's right, title and interest in the subject property for the sum of $15,000.00. The conveyance is to be made by Trustee's Quitclaim Deed.

6. The Objectors have no objection to the trustee's conveyance of the subject property to Wendell Belden because the conveyance includes only property in which the debtor owned record title at the time of his bankruptcy filing.

IT IS THEREFORE ORDERED that the trustee's sale of the subject property to Wendell Belden by Trustee's Quitclaim Deed for $15,000.00 be and is hereby approved.

DATED at Tulsa, Oklahoma, this 2nd day of July, 1998.

/s/ Terrence L. Michael
Terrence L. Michael
United States Bankruptcy Judge

APPROVED AS TO FORM AND CONTENT:

/s/ Sidney K. Swinson
Sidney K. Swinson, OBA #8804
Gable & Gotwals
15 W. 6th St., Ste. 2000
Tulsa, OK 74119-5447
918-582-9201
918-586-8383 (fax)
Attorney for the Objectors

/s/ Patrick J. Malloy III
Patrick J. Malloy, III
Malloy & Malloy
1924 S. Utica, Ste. 810
Tulsa, OK 74104-6515
918-747-3491
918-743-6103 (fax)
Attorney for Trustee

/s/ Donald A. Flasch
Donald A. Flasch
6520 S. Lewis, Ste. 10
Tulsa, OK 74136-1041
918-747-7746
918-747-6105 (fax)
Attorney for Wendell Belden

F:\SKS\CORLETTE\SALE.ORD

LEGAL DESCRIPTION

A part of the NW/4 of the NE/4 of Section 16, Township 24 North, Range 23 East of the Indian Base Meridian, Delaware County, Oklahoma, according to the original U.S. Government survey thereof, being more particularly described as follows, to-wit:

Commencing at the Northeast corner Section 16, thence North 89°-54'-00" West along the North line of Section 16 a distance of 2239.71 feet to the point of beginning; thence North 89°-54'-00" West a distance of 238.46 feet along said North boundary to the G.R.D.A. taking line; thence South 68°-38'-00" West a distance of 162.48 feet along the G.R.D.A. taking line; thence South 72°-09'-00" W a distance of 10.00 feet along said taking line to a found iron pin on the West line of said NW/4 NE/4; thence leaving said taking line S 0°-03'-52" W a distance of 471.39 feet along the West line of said NE/; thence due East 18.30 feet, thence South 2°-23'-03" West a distance of 38.64 feet; thence South 3°-22'-23" East a distance of 97.11 feet to a point on the G.R.D.A. taking line; thence North 55°-24'-00" East a distance of 21.32 feet along the G.R.D.A. taking line; thence leaving said taking line North 00°-16'-00" East a distance of 206.78 feet; thence South 89°-32'-07" West a distance of 28.53 feet; thence due North a distance of 77.50 feet to a found iron pin; thence North 00°-06'-00" East distance of 189.12 feet to a found iron pin; thence 189.12 feet along a curve to the right with a radius of 155.00 feet, said curve having a long cord of 177.60 feet and a bearing of North 35°-03-14" East to a found iron pin; thence 113.65 feet along a curve to the right with a radius of 358 feet, said curve having a long

chord of 113.17 feet and a bearing of North 79°-06'-08" East to a found iron pin; thence North 88°-11'-48" East a distance of 174.06 feet; thence due North a distance of 10.80 feet to the point of beginning, containing 0.451 acres, more or less.

EXHIBIT A

APPENDIX "B"

THE TRIAL COURT OPINION

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY, STATE OF OKLAHOMA

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OF ISLAND PARK, AN OKLAHOMA UNIT OWNERSHIP ESTATE, ISLAND PARK LIMITED, AN OKLAHOMA LIMITED PARTNERSHIP, CORLETT ENTERPRISESM, LLC, AN OKLAHOMA LIMTED LIABILITY COMPANY, AND CLIFF WOODBURY, Plaintiffs, vs. WENDELL D. BELDEN, Defendant.	**FILED** **OCT 04 1999** **CAROLINE M. WEAVER DELAWARE COUNTY COURT CLERK** No. CV-98-222

ORDER

NOW on this 1 day of October, 1999, the Court, having reviewed the Plaintiffs' and Defendant's Proposed Findings of Facts and Conclusions of Law arising from the trial of this cause held on the 19th day of August, 1999, makes the following Findings of Fact and Conclusions of Law, to-wit:

Findings of Fact

1) This Court has jurisdiction and venue over the parties and subject matter hereof.

2) Plaintiffs filed this action seeking to quiet title to a certain tract of land located in Delaware County, Oklahoma, said tract being specifically described as follows:

> Part of the NW ¼ NE ¼ of Section 16, Township 24 North, Range 23 East of the I.B.M., Delaware County, Oklahoma, being more particularly described as follows:
>
> From the NE corner of said NW ¼ NE ¼ run 89° 50' 00" W. 1085.25 feet along the North line of said NW ¼, NE ¼; thence South 16.5 feet to a found iron pin, being the point of beginning; thence 89° 50' 00" W. 120.66 feet to the G.R.D.A. Taking Line; thence S. 66° 38' 00" W. 114.01 feet along said Taking Line to a found iron pin on the West line of said NW ¼ NE ¼; thence S. 00° 03' 52" W. 622.52 feet leaving said Taking Line along said West line to a point on said Taking Line; thence N. 52° 24' 00" E. 48.75 feet along said Taking Line; thence N. 00° 16' 00" E. 209.87 feet leaving said Taking Line; thence S. 89° 32' 07" W. 19.04 feet; thence North 77.50 feet to a found iron pin; thence N. 00° 06' 00" E. 189.57 feet to a found iron pin; thence 189.12 feet along a curve to the right with a radius of 155.00 feet and a chord of N. 35° 03' 14" E. 177.60 feet to a found iron pin; thence 113.65 feet along a curve to the right with a radius of 358.00 feet and a chord of N. 79° 06' 08" E. 113.17 feet to the point of beginning. Containing 0.52 acres more or less. Being subject to any and all easements of records LESS AND EXCEPT: Part of the NW ¼ NE ¼ of said Section 16, Township 24 North, Range 23 East, being more particularly described as follows: From the NE corner of said NW ¼, NE ¼ run South 539.69 feet; thence

West 1302.30 feet to the point of beginning; thence West 18.30 feet to the West line of said NW ¼, NE ¼; thence S. 00° 03' 52" W. 151.13 feet along said West line to the G.R.D.A. Taking Line; thence N. 55° 24' E. 27.43 feet along said Taking Line; thence N. 03° 22' 23" W. 97.11 feet leaving said Taking Line; thence N. 02° 23' 03" E. 38.64 feet to the point of beginning. Containing 0.06 acres, more or less. Being subject to any and all easements of record.

Said title claim was originally based upon adverse possession and reformation of certain deeds.

3) Defendant denied Plaintiffs' claims of title and counter-claimed asserting title ownership.

4) By earlier hearing, Plaintiffs' claims based upon adverse possession were decided in Defendant's favor. Likewise, Plaintiffs' claims of ownership by virtue of a Quit-Claim Deed from Charles Davis, acquired on April 2, 1997, were resolved in Defendant's favor by virtue of Charles Davis' bankruptcy.

5) The issues remaining to be tried before the Court were A) reformation of deeds or B) Defendant's ownership by virtue of a Bankruptcy Trustee's Deed, dated July 9, 1998.

6) Prior to March 25, 1974, Charles J. Davis, either individually or in joint tenancy with his wife, Isla B. Davis, were the record owners of the property described above and the majority of the property contiguous thereto.

7) That subsequent to the above period of time, Charles J. Davis and Isla B. Davis conveyed all of their interests to the land surrounding the above described

property, but did not convey any of the above property prior to Charles J. Davis' bankruptcy filed in February of 1986.

8) That Charles J. Davis' bankruptcy began in 1986, was initially closed in 1994, and then reopened in 1998 when it was discovered by Defendant that the property involved herein had never been included in any legal description of any deed of any of the surrounding properties. That Defendant obtained a Quit-Claim Deed from the Bankruptcy Trustee in July of 1998 covering said property. That although Plaintiffs did not formally protest or demand a hearing in Bankruptcy Court, Defendant was aware of the claims of Plaintiffs, who were in possession of certain parts of said property, and by virtue of said knowledge Defendant cannot qualify as a bona fide purchaser in good faith without notice.

9) That Isla B. Davis was not involved in the bankruptcy, and owned a one-half interest in part of the property involved herein described as Tract #1 and which is more specifically described as follows:

> Part of the NW ¼ of the NE ¼ of Section 16, Township 24 North, Range 23 East of the Indian Base Meridian, Delaware County, Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows:
>
> Commencing at the NE corner of said NW ¼ NE ¼. Thence S. 89°-50'-00" W a distance of 1085.25 feet along the North line of said NW ¼, NE ¼, thence due South 16.50 feet to a found iron pin and the point of beginning. Thence S 89°-50'-00" W a distance of 120.66 feet to the G.R.D.A. taking line, thence S. 66°-38'-00" W. a distance of 140.01 feet along said taking line,

thence S 72°-09'-00" W a distance of 10.00 feet along said taking line to a found iron pin on the West line of said NW ¼ NE ¼. Thence leaving said taking line S 0°-03'-52" W a distance of 285.09 feet along said West line. Thence due East a distance of 21.73 feet, thence N 00°-06'-00" E a distance of 166.94 feet to a found iron pin, thence 189.12 feet along a curve to the right with a radius of 155.00 feet and a chord of N 35°-03'-14" E a distance of 177.60 feet to a found iron pin, thence 113.65 feet along a curve to the right with a radius of 358.00 feet and a chord of N 79°-06'-08" E a distance of 113.17 feet to the point of beginning, containing 0.263 acres, more or less.

That her interest in the above described property was deeded to Corlett Enterprises, which is the current owner of said one-half interest, except as is limited by the ruling of this Court herein.

9(A) The property in dispute is further broken down and described as Tract #2, which is more specifically described as follows:

Part of the NW ¼ of the NE ¼ of Section 16, Township 24 North, Range 23 East of the Indian Base Meridian, Delaware County, Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows:

Commencing at the NE corner of said NW ¼ NE ¼. Thence S. 89°-50'-00" W a distance of 1085.25 feet along the North line of said NW ¼, NE ¼, thence due South 16.50 feet to a found iron pin. Thence S 89°-50'-00" W a distance of 120.66 feet to the G.R.D.A. taking line, thence S. 66°-38'-00" W a distance of 140.01 feet along

said taking line, thence S 72°-09'-00" W a distance of 10.00 feet along said taking line to a found iron pin on the West line of said NW ¼ NE ¼. Thence leaving said taking line S 0°-03'-52" W a distance of 285.09 feet along said West line, thence due East a distance of 18.00 feet to the point of beginning, thence S 50°-03'-52" W a distance of 325.10 feet, thence N 55°-24'-00" E a distance of 26.88 feet, thence N 00°-16'-00" E a distance of 209.87 feet, thence S 89°-32'-07" W a distance of 19.04 feet, thence due North a distance of 77.50 feet; thence N 0°-06'-00" E a distance of 22.63 feet thence due West a distance of 3.73 feet to the point of beginning containing 0.121 acres, more or less.

9(B) The property in dispute is further broken down and described as Tract #3, which is more specifically described as follows:

Part of the NW ¼ of the NE ¼ of Section 16, Township 24 North, Range 23 East of the Indian Base Meridian, Delaware County, Oklahoma, according to the U.S. Government Survey thereof, being more particularly described as follows:

Commencing at the NE corner of said NW ¼ NE ¼. Thence S. 89°-50'-00" W a distance of 1085.25 feet along the North line of said NW ¼, NE ¼, thence due South 16.50 feet to a found iron pin. Thence S 89°-50'-00" W a distance of 120.66 feet to the G.R.D.A. taking line, thence S. 66°-38'-00" W a distance of 140.01 feet along said taking line, thence S 72°-09'-00" W a distance of 10.00 feet along said taking line to a found iron pin on the West line of said NW ¼ NE ¼. Thence, leaving said taking line, S 50°-03'-52" W a distance of 285.09 feet along said

West line to the point of beginning. Thence S 50°-03'-52" W a distance of 337.43 feet, thence N 52°-24'-00" E a distance of 22.74 feet, thence N 00°-03'-52" E a distance of 325.10 feet, thence due West a distance of 18.00 feet to the point of beginning containing 0.137, acres more or less.

10) That the Court visited said premises prior to trial and by visual inspection finds that the road which is located on the property in dispute is the only means of ingress and egress to the properties surrounding the property in dispute. That not withstanding any further order of the Court herein, that an easement by necessity exists on said roadway in favor of all parties hereto and the landowners which own property serviced by this road.

11) That Charles J. Davis at all times relevant hereto believed that he had transferred all of his interest in the property in dispute herein and the surrounding properties when he had delivered respective deeds to said properties.

12) That at the time Charles J. Davis and Isla B. Davis transferred the property to Ebling and until the property ultimately was transferred to Jerry Kropff, a successor interest holder, the property located North and West of the road on the property in dispute was surrounded by a fence. That said fence was removed by Kroft and the property was subsequently transferred ultimately to Island Park Limited, An Oklahoma Limited Partnership. That at the time of the original transfer from Davis to Ebling, both parties and subsequent purchasers believed that the property located North and West of the roadway in Tract #1 was their respective property until Belden's claim was made in 1998. That said Plaintiffs and their predecessors in title mowed, maintained, and operated

a boat slip, and otherwise used said property as their own.

13) That the property involved in the dispute herein described as Tact #2 is encroached upon by Plaintiff's, Cliff Woodbury, tennis court in the southeast part.

14) That the evidence concerning the encroachment of the tennis court by Cliff Woodbury fails to reflect when said tennis court was erected nor evidence tending to show dominion and control over said area outside of said tennis court either at the time of original transfer from Charles Davis nor as of the trial date.

Conclusions of Law

1) A court of equity has the power to correct mutual mistakes in the description of land conveyed by a deed and to conform the deed to the real intention of the parties. Green v. Votaw, 134 P.2d 367 (Supr. Ct. Okl. 1943); Rochelle v. Anderson, 243 P. 528 (Supr. Ct. Okl. 1925).

2) The rule of defenses of limitations and laches in an action to reform instruments altered by fraud or mistake is that if a plaintiff, without any fault or neglect was ignorant of the mistake, the period of limitations or laches starts to run when the plaintiff discovered or should have discovered the mistake. Flowers v. Stanley, 316 P.2d 840 (Supr. Ct. Okl. 1957).

3) The uncontroverted evidence is that none of the parties discovered that record title to the disputed tract remained in Charles J. Davis and Isla B. Davis unitl 1996, or perhaps not until 1997. Plaintiffs were without fault or neglect in failing to discover the status of record title, and neither the doctrine of laches nor

any statute of limitations now bar the Plaintiffs from bringing the above styled and numbered action.

4) In order to obtain reformation of a deed based upon mistake, Plaintiffs must satisfy the following elements, to-wit: (1) There must be an instrument representing an antecedent agreement which should be reformed; (2) There must be a mutual mistake; (3) The resulting instrument must be shown to not reflect what either party intended; and (4) Plaintiffs' evidence must be clear and convincing. Thompson v. Estate of Coffield, 894 P.2d 1065 (Sup. Ct. Okl. 1995).

5) In order to obtain the remedy of reformation, Plaintiffs' evidence must be clear and convincing, but need not be so certain as to go beyond any possibility of controversy, and need not be uncontradicted. Cunnius v. Fields, 449 P.2d 703 (Sup. Ct. Okl. 1969), Thompson v. Estate of Coffield, 894 P.2d 1065 (Sup. Ct. Okl. 1995).

6) The Court finds the decision of the Supreme Court of Oklahoma in Wise v. Latimer, 198 P.2d 1001 (Sup. Ct. Okl. 1998) and Waltrip v. Cathcart, 250 P.2d 43 (Sup. Ct. Okl. 1952) particularly instuctive in adjudicating the issues in the case at bar. In the Wise decision, the Court found a plaintiff entitled to reformation when he intended to purchase and paid for ten acres, but received a deed only covering 7.7 acres, against a defendant who purchased the other 2.3 acres and was not an innocent purchaser without notice. In the Waltrip decision, the Court granted reformation on a cross-petition to the defendant in an action to quiet title to a strip of land between dwelling houses of plaintiffs and defendants. Citing the Wise case with approval, the Court found that the conduct of immediate and remote grantees reflected an intention to convey title to a missing strip despite

plaintiffs' having gone to a remote record owner and obtained a quit claim deed. The Defendant in the above styled and numbered action was not an innocent purchaser for value.

Judgment

This Court finds that the triangular piece of property located North and West of the current road and which is part of the property described as Tract #1 is determined by the Court to be the property of Island Park Limited, an Oklahoma Limited Partnership, and said deeds are reformed for that purpose. That the evidence in regard to this triangular tract is clear and convincing that at the times of original transfer that it was enclosed by the fence that surrounded the described tract conveyed. That all parties treated this tract as included in said transfer and exercised dominion and control over it, ie: mowing, attaching boat dock, and general use thereof. That the original owners, Charles J. Davis and Isla b. Davis, thought they had transferred said tract, never exercised any further control of the same and attempted by later deed to correct said problem when discovery was made thereof. That the statute of limitations did not begin to run until the problem was discovered, less than two (2) years prior to this suit and therefore this action is not barred thereby. The Court further finds that as to the balance of the property in Tract #1, that title is quieted in the Defendant, Wendell D. Belden, as to an undivided one-half interest and to Corlett Enterprises as to an undivided one-half interest. The Court further finds that as to said property which the road is currently located upon, that an easement by necessity exists in favor of all parties hereto for ingress and egress.

The Court further finds and orders that as to Tracts #2 and #3 that title thereto is hereby quieted in the Defendant, Wendell D. Belden. That the evidence relating to reformation lacks the clear and convincing quantum of proof necessary for reformation as to title as to these two tracts. However, the Court finds that if the road referred to above is located on any part of said tracts that an easement by necessity exists and said easement is in favor of all parties hereto for ingress and egress.

The Court finds that all deeds necessary for the ruling of this Court to be effective are reformed for that purpose.

IT IS ALL SO ORDERED, ADJUDGED AND DECREED by the Court.

/s/ Robert G. Haney
ROBERT G. HANEY
District Judge

EXHIBIT "C"

OPINION OF THE
OKLAHOMA COURT OF CIVIL APPEALS

IN THE COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
DIVISION 4

THE BOARD OF DIRECTORS OF COUNCIL OF UNIT OWNERS OF ISLAND PARK, An Oklahoma Unit Ownership Estate; ISLAND PARK LIMITED, an Oklahoma Limited Partnership; CORLETT ENTERPRISES, L.L.C., an Oklahoma Limited Liability Company; and CLIFF WOODBURY, Appellees, vs. WENDELL D. BELDEN, Appellant.	**FILED** **COURT OF CIVIL APPEALS** **STATE OF OKLAHOMA** **July 18, 2000** **JAMES W. PATTERSON** **CLERK** No. 93,833 NOT FOR PUBLICATION

APPEAL FROM THE DISTRICT COURT OF
DELAWARE COUNTY, OKLAHOMA

Honorable Robert G. Haney, Trial Judge

W. Neil Wilson
Richard D. James
Wallace, Owens, Landers
Gee, Morrow, Wilson,
Watson & James
Miami, Oklahoma

Sidney K. Swinson
Gable & Gotwals
Tulsa, Oklahoma — For Appellees

Tom R. Gann
Tulsa, Oklahoma — For Appellant

OPINION

STUBBLEFIELD, J.

This is an appeal from judgment of the district court reforming deeds, quieting title and declaring a road easement of necessity. After review of the record on appeal and applicable law, we affirm.

This dispute arose from the acquisition and subsequent conveyance by Charles J. Davis of certain real property located on or near Grand Lake of the Cherokees in Delaware County. Davis acquired a tract of lakeside property by conveyances in 1957 and 1958. He thereafter sold the property in four separate transactions – to Ebling in 1974, to McClure in 1978, to Kathol in 1980 and to Eden in 1982. Although it was the apparent intent of Davis to deed all of his land away, not all of it was conveyed by the four conveyances. Davis later filed for bankruptcy in 1986 and did not list the unconveyed property in the bankruptcy schedules. A final bankruptcy decree was entered in March of 1994.

A dispute arose between subsequent property owners William Corlett and Wendell D. Belden regarding right to use a boat dock. Belden researched the legal titles and found that record title to some land still remained in Davis. In 1998, Belden caused the bankruptcy proceedings to be reopened to procure an order to allow the Bankruptcy Trustee to sell him the property for the sum of $15,000.00. Trustee conveyed the property by quit-claim deed.

This lawsuit was brought against Belden in the District Court of Delaware County by various parties – (1) The Board of Directors of the Council of Unit Owners of Island Park, an Oklahoma Unit Ownership Estate; (2) Island Park Limited, an Oklahoma Limited Partnership; (3) Corlett Enterprises, L.L.C., an Oklahoma Limited Liability Company; (4) Board of Directors of the Council of Unit Owners of Shangri-La Chateaus, an Oklahoma Unit Ownership Estate; and, (5) Cliff Woodbury.

By their amended Petition[1], Plaintiffs Island Park Limited and Corlett Enterprises claimed a right to the described real property, based on record title and by virtue of adverse possession. They sought to quiet their title against any claim of Belden. They also sought relief by way of reformation of the various conveyances of Charles J. Davis and his wife to properly reflect the intent of the parties.

Belden denied Plaintiffs' claims of record ownership and adverse possession. He filed a counterclaim seeking to quiet his own title to the property.

The trial court granted Belden's motion for summary judgment on the issue of adverse possession and on Defendant Corlett Enterprise's claim of an ownership interest through a quitclaim deed of April 2, 1997, from the bankrupt Charles S. Davis and his

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1 The original petition is not a part of the appellate record.

wife, Isla B. Davis.[2] The cause proceeded to trial on the issues of (1) whether Plaintiffs or any of them owned record title to any portion of the disputed tract, or (2) whether Belden was the record owner of title to the disputed real property by virtue of the July 9, 1998, bankruptcy trustee deed.

After hearing, the trial court made findings of fact and conclusions of law. It found that Plaintiff Island Park Limited was the owner of the triangular piece of property, or what was referenced as "Tract #1," and reformed the deed for that purpose. It determined that Charles and Isla Davis had intended to transfer that tract and, when it was discovered that the transfer had not been effected, they attempted to correct the deed by a later deed. The trial court ruled that the statute of limitations for such reformation did not begin to run until the error had been discovered and that reformation was not barred by the statute of limitations.

The trial court also ordered that a portion of Tract #1 be quieted in Belden as to an undivided one-half interest and to Corlett Enterprises as an undivided one-half interest. It also determined that a roadway across the property was an easement by necessity for ingress and egress in favor of all parties. It quieted title to "Tracts #2 and #3" in Belden but stated that "if the road (easement by necessity) is located on any part" of those tracts, an "easement by necessity exists ... in favor of all parties for ingress and egress." Belden appeals.

Belden first proposes that the trial court lacked jurisdiction to reform the deed in favor of Island Park Limited Partnership. He asserts that at the time the sale of the disputed property was consummated between the bankruptcy trustee and Belden, Plaintiffs

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2 Isla B. Davis was not involved in the bankruptcy and owned a one-half interest in part of the property.

had notice of and were present in bankruptcy court and allowed the sale to be consummated without objection to the sale.

The issue of jurisdiction is fundamental, must be answered and can be raised by any party at any time. Hawkins v. Hurst, 1970 OK 56, ¶17, 467 P.2d 159, 162. "Contested issues of law are reviewable in all actions, suits and proceedings by a de novo standard." Aquero v. Aquero, 1999 OK CIV APP 38, ¶10, 976 P.2d 1088, 1090; see also Weeks v. Cessna Aircraft Co., 1994 OK CIV APP 171, ¶5, 895 P.2d 731, 733. A de novo review means that no deference will be given to the lower court's determination, but it does not necessarily require a full rehearing of new fact finding. Bose Corp. v. Consumers Union of United States, Inc., 466 U.S. 485 (1984).

Belden asserts that Plaintiffs had appeared in the reopened bankruptcy proceedings and that they initially attempted to raise a claim of adverse possession but later withdrew any objections. He claims the order authorizing the sale of the disputed property was based on the determination that the property was a part of the bankruptcy estate. He cites a bankruptcy case, In re Allnut, 220 B.R. 871, 894 (Bankr. D. Md. 1998), rev'd 155 F.3d 557 (4th Cir. 1998), wherein the court stated: "Principles of res judicata and collateral estoppel prevent a bankruptcy debtor and those acting on his behalf from attacking the orders of (the bankruptcy court) outside the usual appellate procedures during the pendency of the bankruptcy case...."

A review of the bankruptcy court order authorizing the Trustee's sale of property reveals that the Trustee and Belden had agreed that Belden would "purchase all the bankruptcy estate's right, title and interest" in that property with conveyance to be made by "Trustee's Quitclaim Deed." Plaintiffs did file an objection to the sale of the property based on their

claim of an interest in the property but withdrew the objection.

Plaintiffs maintain that the bankruptcy court order makes it clear that the issue of whether they had acquired title to the property by adverse possession had not been litigated in the bankruptcy proceeding and they are not collaterally estopped from litigating the issue of whether they had acquired title to the property by adverse possession in state court. They assert that Belden purchased the property from the bankruptcy trustee with full knowledge that he likely would be a defendant in this case.

Quoting Carris v. John R. Thomas & Associates, P.C., 1995 OK 33, ¶11, 896 P.2d 522, 527-528, the court in Hesser v. Central National Bank & Trust Co. of Enid, 1998 OK 15, ¶17, 956 P.2d 864, 868, stated that "[t]he doctrine of issue preclusion bars a party against whom it is being asserted from relitigating the issue when the party was either a party to or in privity with a party to [a] prior action" and "the issue subject to preclusion [was] actually litigated in a prior case in which the issue was necessary or essential to the outcome.'"

Our review of the entire record, including documents from the bankruptcy proceeding, convinces us that the validity of title held by the Trustee was not litigated. Notably, the Trustee was authorized to transfer title by quitclaim deed, thus transferring only that interest, if any, actually held in the subject property. On reviewing that determination, we conclude that neither the doctrine of collateral estoppel or res judicata bars action in state court for a determination of the issues of adverse possession and/or reformation of deeds. Accordingly, we reject Belden's challenge to the trial court's jurisdiction.

Belden also asserts that the action for reformation of deed is barred by the statute of limitations. This is another jurisdictional attack. There is no dispute that a five-year statute of

limitations is applicable to an action to reform a deed because of alleged mistake. Overholt v. Independent Sch. Dist. 2, 1993 OK CIV APP 75, ¶8, 852 P.2d 823, 825. The legal dispute relates to the time the statute began to run under the facts of this case.

Plaintiffs assert that the statute began to run in 1998, when the mistake was discovered. Belden contends that the statute began to run when the deeds were recorded and the deeds became public record, which constituted constructive notice from which the alleged mistake should have been discovered.

In that regard, it is the rule that notice or knowledge that will prevent one from being protected against reformation, as a bona fide purchaser, may be either actual or constructive. City of Deadwood v. Summit Inc., 607 N.W.2d 22, 31 (S.D. 2000). Further, 16 O.S. 1991 §16, provides:

> Every conveyance of real property acknowledged or approved, certified and recorded as prescribed by law from the time it is filed with the register of deeds for record is constructive notice of the contents thereof to subsequent purchasers, mortgages, encumbrances or creditors.

Belden contends that, whatever the intent of Davis in transferring the property to the Eblings, the deeds had been recorded in 1974. Thus, at the time the Eblings transferred the property to subsequent grantees Jerry Kropff and Richard Bowlin, they had constructive notice of the true boundaries of the property. And, when Corlett purchased the property from Kropff and Bowlin in 1995, all claims to the right of reformation had been foreclosed. We disagree.

First of all, the evidence does not demonstrate that Belden was a bona fide purchaser, because he knew that Davis did not claim any remaining land in the tract that he had conveyed and, thus, thought the

deeds he granted conveyed his entire interest. Further, the courts in Good v. Cohlmia, 1958 OK 230, ¶0, 330 P.2d 588, 588, and Nelson v. Daughtery, 1960 OK 205, ¶33, 357 P.2d 425, 433, held that the statute does not begin to run against an equitable right to reform a deed until the legal effect is questioned or disputed.

The evidence in this case establishes that all parties thought the conveyances from Davis to the property owners of Plaintiff Island Park Limited had effected a complete transfer o fall property owned by Davis until the dispute over the boat dock arose between Corlett and Belden. Belden then searched the record and discovered the mistake – that record title to the boat dock property was still held by Davis and his wife.

The record conclusively demonstrates that this was the discovery of the mistake in the Davis deed and that it took place in 1998. Therefore, we find that the trial court properly held that the action was not barred by the statute of limitations.

Belden next proposes that the trial court erred in determining that the deeds should be reformed as to the triangular shape portion of Tract #1. He cites Griffin v. Griffin, 1992 OK 36, ¶15, 832 P.2d 810, 813, for the proposition:

> [T]he theory of reformation requires that the [party] show: (1) some instrument representing an antecedent agreement the terms of which should be reformed, (2) mutual mistake . . ., and, (3) proof of these elements by clear and convincing evidence. [Footnote omitted.]

Belden claims there was no clear and convincing evidence supporting the reformation judgment. He acknowledges that Davis testified he made a mistake because he intended to deed the disputed land but claims the lower court's judgment is faulty because

there was no evidence of mistake of Davis' grantee, Ebling; it was the subsequent conveyance by Ebling that was reformed.

The court in Lindley v. Lindley, 1998 OK 57, ¶4, 961 P.2d 202, 203, stated: "Because the action to [reform] the deed and quiet title is equitable in nature, our task on appeal is to review the record and the evidence to determine whether the decision of the trial court is correct as a matter of law, and supported by, the clear weight of the evidence." Accord Chapman v. Chapman, 1965 OK 48, ¶6, 400 P.2d 831, 834; Copeland v. Tucker, 199 Okla. 211, 213, 185 P.2d 192, 193.

The evidence clearly demonstrated that Davis transferred various parcels of land to individuals, who are or were owners in Island park Limited. Davis testified that the triangular shaped property lays between property deeded to the McClures and Ebling and is bounded on the other side by Grand Lake of the Cherokees. Davis verified that it was his intention at the time he made the various deeds to convey all his rights in the total property to the grantees. Thus, his testimony established that he had intended to transfer all his interest in the property to the Eblings and McClures. He also testified:

> [I]f I had known I owned that, what was a road, I certainly would have at the advice of attorneys or somebody, I would have recommended giving half to the one party and half to the other. They have to have an access to the property . . . . I made a good honest sale and I was not wanting or thinking I was entitled to any portion.

His testimony unequivocally establishes that he had intended to transfer all his interest in the property as well as the fence-enclosed roadway abutting the property. Thus, as between Davis and the owners of property abutting the roadway, they were entitled to

have their deeds reformed to carry out the true intent of both the grantor and grantees.

After the flawed Davis conveyances, none of the subsequent purchasers from Davis' grantees challenged the descriptions contained in the deeds to any of the tracts of land. Each had accepted the deeds as containing the correct description for property represented by the deeds.[3]

The evidence relative to property descriptions and the intent of the successive parties in making conveyances is conflicting, but it most strongly supports a finding of mutual mistake. On review of an order of the trial court sitting in equity, this court will not disturb that ruling unless the order is "against the clear weight of the evidence or contrary to law or established principles of equity." Kelly v. Old Republic Ins. Co., 1995 OK CIV APP 26, ¶4, 892 P.2d 668, 669, quoting Wetsel v. Johnson, 1970 OK 69, ¶7, 468 P.2d 479, 481. The trial court heard and observed the witnesses and was in a far better position to weigh their credibility. Additionally, the trial court actually went to the location of the disputed property, which enabled it to grasp the references to fences, seawall, maps, pictures and other exhibits. Therefore, we conclude that the lower court's judgment with regard to reformation of deeds may not be disturbed.

Belden also contends that the trial court erred in finding that the roadway was an easement by necessity. Citing authority from other jurisdictions,

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3 The Testimony of Jerry Kropff, from whom Corlett purchased the property, was that it was represented to him that the property he purchased from the Eblings was that sold to them by Davis. He testified that it was his belief that he owned the disputed property. He said that he had a title opinion before he purchased the property and he did not recall whether it identified the property as being part of what he was buying. He testified that "you're talking about this triangle, but. . . there wasn't no triangle out there at the time." We find his testimony supportive of the conclusion that Ebling also deeded the property continuing the mistake of his original transaction with Charles Davis.

which we find distinguishable from the facts herein,[4] he recites the "general rule" that "where there is access to a tract over a public and navigable body of water, an easement by necessity over a land route may not be obtained." He points to access – ingress and egress – to the various properties by the "public waterway" Grand Lake, as negating any legal right to a grant of an easement by necessity.

The evidence clearly shows that the roadway had served as an easement to the property during Davis' occupation of the property with continued use and maintenance of the roadway since Davis' conveyance of the abutting property. Davis testified unequivocally that had he known that he owned the property over which the roadway traversed, he would have conveyed an interest therein to his grantees for the continued use as a roadway. Even Belden denied that it was his intent to exclude any of the other property owners from that land. Therefore, we find no error in the trial court's declaring the road to be an easement by necessity in favor of all parties for ingress and egress, even though the tracts of land may have been accessible by boat on Grand Lake.

We find none of Belden's propositions of error availing of reversal. Accordingly, the judgment of the trial court is AFFIRMED.

GOODMAN, C. J., Presiding, and REIF, J., concur.

July 18, 2000

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4 Belden cited Curtis v. Colby, 798 P.2d 248 (Or. Ct. App. 1990) (waterway access to island property), and Estate of A. Graham, 516 N.Y.S.2d 614 (N.Y. Ct. App. 1987) (neither the reservation of an easement in gross, nor the reservation of a right-of-way in plaintiff's predecessor-in-interest, entitles plaintiff to an express easement across defendant's property).

APPENDIX "D"

THE COURT OF APPEALS DENIAL OF REHEARING

IN THE COURT OF CIVIL APPEALS
STATE OF OKLAHOMA
DIVISION 4

FILED
SUPREME COURT
STATE OF OKLAHOMA
SEP 25 2000
JAMES W. PATTERSON
CLERK

THE CLERK IS DIRECTED TO NOTIFY ALL PARTIES OF THE FOLLOWING ORDER(S):

93,13 MATTHEW DOWLING, individually and as a Limted Partner in the Prado Verde Ranch Limited Partnership, Appellee, vs. PRADO VERDE RANCH, INC., a corporation, THE PRADO VERDE RANCH LIMITED PARTNERSHIP, and JEROME WILLIS, an individual, Appellants.

Petition for Rehearing of Appellants is DENIED

93,833 THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, an Oklahoma Unit Ownership Estate; ISLAND PARK LIMITED, an Oklahoma Limited Partnership; CORLETT ENTERPRISES, L.L.C., an Oklahoma Limited Liability Company; and CLIFF WOODBURY, Appellees, vs.WENDELL D. BELDEN, Appellant.

Petition for Rehearing of Appellant is DENIED.

Done in conference this 22nd day of September, 2000.

/s/ Ronald J. Stubblefield
Ronald J. Stublefield
Acting Presiding Judge
Division 4
Court of Civil Appeals

APPENDIX "E"

THE OKLAHOMA SUPREME COURT DENIAL OF CERTIORARI

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

FILED
SUPREME COURT
STATE OF OKLAHOMA
JAN 18 2001
JAMES W. PATTERSON
CLERK

Thursday, January 18, 2001

THE CLERK IS DIRECTED TO ENTER THE FOLLOWING ORDERS OF THE COURT:

92,034 Ali Mehdifpour v. Kenneth Holland.
Petition for rehearing is denied.
CONCUR: Hargrave, C.J., Watt, V.C.J., Hodges, Lavender, Opala, Kauger, Summers, Winchester, JJ.
DISQUALIFIED: Boudreau, J.

92,164 Arrowhead Energy, Inc. v. Baron Exploration Company et al.
Petition for certiorari is denied.
All Justices concur.

92,704 Sharon A. Meredith V. David Leo Smith.
Petition for rehearing is denied.
All Justices concur.

92,966 Darrell G. Jenkins as trustee of the Larry W. Jenkins Irrevocable Trust et al. v. Kathryn W. Cinocca as trustee of the Mary A. Inman Irrevocable Trust et al.
Petition for certiorari is denied.
All Justices concur.

92,970 Darrell G. Jenkins as trustee of the Larry W. Jenkins Irrevocable Trust et al. v. Kathryn W. Cinocca as trustee of the Mary A. Inman Irrevocable Trust et al.
Petition for certiorari is denied.
All Justices concur.

93,691 Vickie L. Fry v. Wal-Mart Stores, Inc.
Motion for rehearing is denied.
All Justices concur.

93,833 The Board of Directors of the Council of Unit Owners of Island Park et al. v. Wendell D. Belden.
Petition for certiorari is denied.
All Justices concur.

93,889 In the Matter of the Estate of Corrine Lasater Elliot, Deceased. Herbert L. Lasater et al. v. Kelly Myers.
Petition for certiorari is dismissed as untimely.
All Justices concur.

94,231 Multiple Injury Trust Fund v. Gary V. Vasseur et al.
Petition for certiorari is denied.
All Justices concur.

/s/ Rudolph Hargrave
CHIEF JUSTICE

Supreme Court, U.S.
FILED
MAY 18 2001
CLERK

No. 00-1601

IN THE

Supreme Court of the United States

WENDELL D. BELDEN,

Petitioner,

v.

BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE OKLAHOMA COURT OF CIVIL APPEALS, DIVISION FOUR

BRIEF IN OPPOSITION

SIDNEY K. SWINSON
GABLE & GOTWALS
100 West Fifth Street
Suite 1100
Tulsa, OK 74103-4217
(918) 595-4800

W. NEIL WILSON
Counsel of Record
RICHARD D. JAMES
WALLACE, OWENS, LANDERS, GEE, MORROW, WILSON, WATSON & JAMES
P.O. Box 1168
Miami, OK 74355-1168
(918) 542-5501

Attorneys for Respondents

166994

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

LIST OF PARTIES AND STATEMENT PURSUANT TO RULE 29.6

The Respondents are Corlett Enterprises, LLC and the Council of Unit Owners of Island Park, an Oklahoma Unit Ownership Estate.

Respondent, Corlett Enterprises, LLC, has no parent corporation and no publicly held company owns 10% or more of its stock.

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RESPONSE TO PETITION FOR CERTIORARI

Pursuant to Rule 15, the above captioned Respondents hereby submit the following in answer to the Petition for Certiorari filed herein filed by the Petitioner.

STATEMENT OF THE CASE

After becoming involved in a dispute over a boat dock with the developer (Corlett Enterprises, LLC) and the Council of Unit Owners of Island Park, an Oklahoma Unit Ownership Estate. Mr. Wendell Belden, an owner in the Unit Ownership Estate, had the record searched and determined that a strip of land, most of which is the subject of this litigation, was in the record name of Charles J. Davis. Mr. Davis had filed Bankruptcy in the United States Bankruptcy Court for the Northern District of Oklahoma without listing that property as an asset. Mr. Belden asked that the Bankruptcy be re-opened and an offer was made to purchase the tract. Mr. Corlett, a creditor in the Bankruptcy Estate, received notice and caused an Objection to be filed advising that various parties had claims regarding said real estate. None of the other Respondents were involved or had notice of the bankruptcy proceeding.

Based upon a hearing May 28, and thereafter on July 2, the Bankruptcy Court Ordered and authorized the Trustee to sell to Mr. Belden whatever interest Mr. Charles J. Davis may have had at that time without warranty. Suit was filed on June 5, 1998, on the questions of adverse possession and reformation of Deed. A Motion to Dismiss was filed by Mr. Belden together with a Motion for Summary Judgment on the issues of adverse possession and the assertion that the District Court was without jurisdiction. Based on an

agreement between the parties the Respondents moved for an Order of the Bankruptcy Court "annulling the automatic stay in the Bankruptcy Court". The Bankruptcy Court found "Cause exist to annul the automatic stay of 11 U.S.C. § 362(a), to permit Movants to proceed with the Quiet Title Action . . ." the Order concluded as follows:

> IT IS THEREFORE ORDERED, that the automatic stay of 11 USC § 362 (a) be and is hereby annulled as related to subject property from and after May 28, 1998, to permit Movants to proceed with the Quiet Title Action in the District Court of Delaware County, Oklahoma.

Mr. Belden thereafter withdrew his Motion to Dismiss in the District Court. The trial Court sustained Appellant's Motion with regard to claim of adverse possession and the matter proceeded to trial based upon the issue of reformation of Deed. During the trial of the matter the only evidence presented with regard to the intent of the Grantor concerning the conveyances which were the basis for the Plaintiffs claim of title was that in his four (4) separate conveyances (1974 Davis to Ebling, 1978 Davis to McClure, 1980 Davis to Kathol, and 1982 Davis to Eden), intended to convey all of his interest in the area. After these sales Mr. Davis ceased to maintain the property because he considered it to be a part of the property conveyed to these third parties. The only evidence submitted during the trial of the case with regard to the intent and understanding of the Grantees was that they and their successors in title continued to maintain, utilized, and exert domain and control under the belief of ownership with regard to the tracts which are the subject matter of the litigation. There was absolutely no evidence presented to the contrary.

The tract which is the subject matter of the litigation consists of a hard surface roadway bordered with grass and well maintained white fences which constitutes the only access to the residential premises adjacent to the roadway, and a small, contiguous, triangle shaped tract adjacent to property owned by the Grand River Dam Authority.

The Trial Judge entered findings of fact and conclusions of law which reformed the Charles J. Davis deed with regard to a portion of the property and declined to reform other conveyances, thereby quieting title in Mr. Belden to a portion of the tract. Mr. Belden's ownership, however, was found to be subject to an undivided one-half (1/2) interest claim in favor of Mr. Corlett, who had acquired the interest of Isla Davis, the wife of Charles J. Davis, who was not involved in the Bankruptcy proceedings filed by her husband.

The Court also found the entire tract was burdened by an easement of necessity as it provided sole access to the Island Park homeowners and other residents in the area. This finding was based on uncontroverted evidence. By agreement the judge had viewed the property.

It is from this decision that the Defendant appealed. The Court of Appeals affirmed the ruling below and denied a petition for rehearing. The Oklahoma Supreme Court denied certiorari.

ARGUMENT AND AUTHORITY WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE DENIED

The due process and jurisdictional issues suggested are contrary to the consent order in the bankruptcy court and facts established or admitted.

ANSWER TO PROPOSITIONS ADVANCED BY PETITIONER

A. The Trial Court's Ruling on an Easement by Necessity for Access to the Premises was Supported Evidence and within the Power of the Court to Grant and Petitioner had Opportunity and Addressed the Matter in his Testimony.

Counsel for Mr. Belden at trial are no longer of record, but the question as to whether there was an access easement by necessity was first discussed by counsel and the Judge at a motion docket which preceded the trial by a significant portion of time. The Trial Judge at the request of the parties had viewed the premises and the evidence established that the roadway was the only access and based upon that evidence and argument of counsel, the Trial Judge found an easement by necessity. During the trial Mr. Belden replied in the negative when he was asked if he ever had the intention to exclude any of the owners of the property from access to that land. A court of equity which obtained jurisdiction of the controversy on any ground or for any purpose will retain jurisdiction for the purpose of administering complete relief and doing entire justice to avoid multiplicity of suit and may treat a pleading amended upon an issue fully tried. *Watkins v. McComber*, 1952 OK 422, 256 P.2d 158; *Welch v. Ruby*, 198 P.2d 432 (Okla. 1948); *Vinson v. Oklahoma City*, 66 P.2d 933 (Okla. 1937); and *Jackson v. Jackson*, 167 P.2d 51 (Okla. 1946). No objection or request for a continuance was made at trial with regard to the easement and Mr. Belden testified about the owners using the road. There was opportunity, no objection and no violation of due process.

B. There is no estoppel based upon the Bankruptcy Court issuing a Quit Claim Deed. The Delaware County District Court had jurisdiction.

Jurisdiction was in the Oklahoma District Court. It is significant that the Bankruptcy Court issued two (2) Orders. One authorized the Trustee to issue a Quit Claim Deed to the Defendant and the second which appears in the transcript attached to Belden's "Withdraw of Motion to Dismiss" provides in part as follows:

> IT IS THEREFORE ORDERED, that the Automated Stay of 11 USC §362(a) be and is hereby annulled as it relates to the subject property from and after May 28, 1999, to permit Movants to proceed with the quiet title action in the District Court of Delaware County, Oklahoma. ENTERED this 13th day of July, 1999. /S/Terrance L. Michael, United States Bankruptcy Judge.

Belden's attorneys in that proceeding consented to that Order. In other words, all the parties including the Bankruptcy Judge agreed that the issue regarding the title to the property would be adjudicated by the District Court of Delaware County. Here again, as in the question of owner's access to the property, Mr. Belden has changed his mind. There were no issues presented to the Bankruptcy Court. The Respondents were not parties or involved in the bankruptcy court proceedings. There was jurisdiction in State Court.

SUMMARY

The Trial Court having acquired jurisdiction in an equitable matter has the power under previous decisions of this Court to administer relief in accordance with the evidence as submitted. The record is quite clear that the Bankruptcy Court determined no issues and that all the parties, their attorneys and the Bankruptcy Court itself anticipated and desired that the question of title be determined by the District Court of Delaware County.

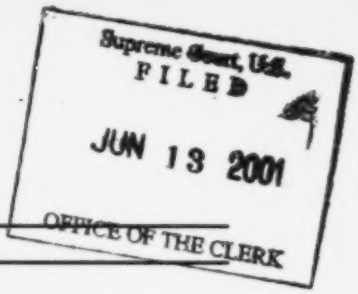
Respectfully submitted,

SIDNEY K. SWINSON
GABLE & GOTWALS
100 West Fifth Street
Suite 1100
Tulsa, OK 74103-4217
(918) 595-4800

W. NEIL WILSON
Counsel of Record
RICHARD D. JAMES
WALLACE, OWENS, LANDERS,
GEE, MORROW, WILSON,
WATSON & JAMES
P.O. Box 1168
Miami, OK 74355-1168
(918) 542-5501

Attorneys for Respondents

(3)



No. 00-1601

IN THE

Supreme Court of the United States

WENDELL D. BELDEN

Petitioner,

v.

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, an Oklahoma Unit Ownership Estate, ISLAND PARK LIMITED PARTNERSHIP, CORLETT ENTERPRISES, L.L.C., An Oklahoma Limited Liability Company, and CLIFF WOODBURY,

Respondents.

On Petition For Writ Of Certiorari
To The Supreme Court of Oklahoma

REPLY TO BRIEF IN OPPOSITION

Mark E. Hardin
Counsel of Record
5110 S. Yale
Suite 100
Tulsa, OK 74135
(918) 492-5541

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21 pp

REPLY TO BRIEF IN OPPOSITION

Pursuant to Supreme Court Rule 15.6, Petitioner, Wendell D. Belden, hereby submits the following reply to the Respondent's Brief in Opposition.

BRIEF REMINDER OF THE FACTS

Petitioner purchased several strips of land from a Bankruptcy Trustee for the purpose of attaching a boat dock. The Respondents filed two Objections to the sale. The first Objection was based on a claim of adverse possession to the subject property. The Second Objection claimed that the Trustee's legal description incorrectly included another tract to which Respondents claimed adverse possession.

However, Respondents abandoned their claims and allowed the sale to proceed when it became apparent that the Bankruptcy interrupted the fifteen-year statute of limitations. Respondents then filed a quiet title suit in State Court on June 5, **1998**. One year later, Petitioner threatened a lawsuit for violation of the Bankruptcy Automatic Stay. Respondents then sought relief from the Stay by motion filed on July 12, **1999**. Because the trial was only one month away, Petitioner's previous attorney signed the Agreed Order Lifting the Stay, but Petitioner did not waive his right to challenge the jurisdiction of the State Court.

The State Court case proceeded on Respondents' only claim: adverse possession. When it became apparent that even the State Court agreed that the adverse possession claim must fail, Respondents amended their Petition to add a claim for reformation of deed. The State Court held that Petitioner could not be a bona fide purchaser because he had knowledge of the Respondents' claim, which at the time of purchase was a facially invalid claim for adverse possession.

The State Court reformed several deeds and awarded the most valuable tract of land to Respondent Island Park Limited. The State Appellate Courts have affirmed the trial court.

MISSTATEMENTS OF FACT CONTAINED IN RESPONDENTS' BRIEF IN OPPOSITION

Respondents' Brief in Opposition contains misstatement of facts and omissions that should be noted by the Court when analyzing this case.

First, the Respondents would have this Court believe that Bob Corlett, individually, was the only person associated with the Respondents who took part in the Bankruptcy Proceedings. However, even a cursory review of the Objections filed in the Bankruptcy Court reveals that the Objections were filed on behalf of Corlett Enterprises, L.L.C. and Island Park Homeowners Association. The Board of Directors of the Council of Unit Owners of Island Park commonly does business as "Island Park Homeowners Association." Corlett took over the development of Island Park and makes all claims of title through Island Park Limited. The Objections have been reprinted in the Appendix hereto as Exhibits A and B.

Next the Respondents would have this Court believe that Petitioner always had notice of Respondents' reformation of deed claim. Respondents falsely state in their brief that their State Court Petition was filed on June 5, 1998, as a claim for adverse possession **and** for reformation of deed. However, when one compares the original Petition filed on June 5, **1998**, with the Amended Petition filed on July 16, **1999**, it becomes crystal clear that the reformation of deed claim was not contained in the original Petition, but was in fact added over one year later as Paragraph III of the Amended Petition.

The Amended Petition added the reformation of deed claim just one month before the August 19, 1999, trial and just days after Petitioner's previous attorney agreed to have the Bankruptcy Stay lifted. Petitioner had no notice of the reformation of deed claim at the time he purchased the property. The Original Petition and the Amended Petition have been reprinted in the Appendix hereto as Exhibits C and D.

Respondents correctly state that they presented evidence at trial to show that the original Grantor intended to convey the tracts in question, but omitted the tracts by scrivener's error. The evidence presented was a statement made by Davis (the original grantor) in a deposition taken in Arizona and paid for by Respondent Corlett. Corlett was Davis' loyal employee for many years. Petitioner did not appear at the Arizona deposition.

Respondents incorrectly state that Davis' statements were the only evidence presented at trial to show his intent as the Grantor. Respondents also entered into evidence several deeds.

Because Respondents make reference to these deeds in their Brief, it is important to point out that in one deed alone (Davis to McClure), Davis added twenty-six lines of complicated legal description that specifically omitted most of the land in question. The McClure deed was entered into evidence and on its face contradicted Davis' statement that he omitted the property by scrivener's error. Twenty-six lines of added language is not a scrivener's error.

Petitioner's former attorney did agree that the Judge could view the properties to put their layout into perspective. However, nothing in the pre-trial order or any other part of the record indicates that an easement by necessity was going to be considered at

trial. The trial transcript further reflects that an easement was not one of the issues presented for trial. Furthermore, no objection to the easement and no request for continuance were made at trial because the final order was Petitioner's first notice of the easement.

It is also true that Petitioner testified that he did not intend to prevent access to his fellow condo owners. However, that does not mean that he consented to a permanent and gratuitous easement over his property. Just because Petitioner objects to the easement does not mean he changed his mind.

CONCLUSION

The Petitioner purchased the property in open court with representatives of the Respondents present. Respondents allowed the sale to proceed. Although Respondents wrongfully filed a subsequent State Court proceeding. Petitioner's allowing the State Court case to proceed and his subsequent appeal to this Court was the proper procedure.[1] The Court should not be swayed by Respondents' blatant misstatement of the facts and should grant Petitioner's Petition for Certiorari.

Respectfully Submitted,

Mark E. Hardin
Counsel of Record
5110 S. Yale, Suite 100
Tulsa, OK 74135
(918) 492-5541
Attorney for Petitioner

[1] See *Rivit v. Regions Bank of Louisiana*, 522 U.S. 470, 478 (1998) Holding that Claim Preclusion by reason of a prior Federal Judgment is a defensive plea that does not provide a basis for removal. Such a defense is properly made in the State proceedings, and the State Court's disposition of it is subject to United States Supreme Court's ultimate review.

APPENDIX "A"
THE FIRST BANKRUPTCY OBJECTION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
98 FEB-2 PM 3:49
DOROTHY EVANS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLA

IN RE:	)	
	)	
CHARLES J. DAVIS,	)	
d/b/a Shangri-La,	)	
	)	Case No. 86-00345-M
	)	(Chapter 11)
Debtor.	)	

OBJECTION TO SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

Corlette Enterprises L.L.C. ("Corlette") and Island Park Homeowners Association ("Island"), hereby object to the trustee's Notice and Motion for Order Authorizing Sale of Real Property of the Estate, Free and Clear of all Liens, Claims and Encumbrances Pursuant to 11 U.S.C. §363. Corlette and Island object because the property which the trustee proposes to sell ("the subject property") is not property of this bankruptcy estate. Although title to the subject property was in the name of Charles J. Davis and Isla B. Davis, husband and wife, at the time of the bankruptcy filing of Charles J. Davis, the subject property is subject to the interests of Corlette and Island, acquired through adverse possession.

The subject property can be sold by the trustee free and clear of the interest of an entity other than the bankruptcy estate only if one of the conditions of 11 U.S.C. §363 is met. It is the trustee's burden to do so.

WHEREFORE, Corlette and Island request that the trustee's Motion to sell the subject property free and clear of their interests be denied.

Dated at Tulsa, Oklahoma this 2nd day of February, 1998.

/s/ Sidney K. Swinson
Sidney K. Swinson, OBA #8804
Elizabeth R. Muratet, OBA # 10516
Gable Gotwals Mock Schwabe
Kihle Gaberino
15 W. 6th St., Ste 2000
Tulsa, OK 74119-5447
918-582-9201
918-586-8383 (fax)

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd of February, 1998, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, addressed as follows:

Katherine Vance
Assistant United States Trustee
224 S. Boulder Ave., Ste 225
Tulsa, OK 74103

Patick J. Malloy, III
Malloy & Malloy
1924 S. Utica, Ste 810
Tulsa, OK 74104-6515

/s/ Sidney K. Swinson
Sidney K. Swinson

APPENDIX "B"
THE SECOND BANKRUPTCY OBJECTION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

	)	**FILED**
	)	**98 APR-15 PM 4:26**
IN RE:	)	**DOROTHY EVANS, CLERK**
	)	**U.S. BANKRUPTCY COURT**
CHARLES J. DAVIS,	)	**NORTHERN DISTRICT OF OKLA**
d/b/a Shangri-La,	)	
	)	Case No. 86-00345-M
	)	(Chapter 11)
Debtor.	)	

OBJECTION TO TRUSTEE'S SALE OF DEBTOR'S INTEREST IN REAL PROPERTY

Corlette Enterprises L.L.C. and Island Park Homeowners Association, hereby object to the trustee's Notice and Motion for Order Authorizing Sale of Debtor's Interest in Real Property Without Warranty or Representation of any Kind, filed March 26, 1998, to the extent the trustee proposes to sell an interest in property in which the bankruptcy estate owns no interest ("the subject property"), described in the attached Exhibit A. Objectors claim an interest in the subject property which is the subject of a quiet title action pending in the District Court of Delaware County, Oklahoma, designated as Case No. CV-98-138. A conveyance by the trustee to Wendell D. Belden will further cloud the title to the subject property.

WHEREFORE, Objectors request that the Trustee's Notice and Motion be denied to the extent that he requests authorization to convey to the purchaser an interest in the subject property.

Dated at Tulsa, Oklahoma this 15th day of April, 1998.

/s/ Sidney K. Swinson
Sidney K. Swinson, OBA #8804
Gable Gotwals Mock Schwabe
Kihle Gaberino
15 W. 6th St., Ste 2000
Tulsa, OK 74119-5447
918-582-9201
918-586-8383 (fax)

Attorneys for Corlette Enterprises, L.L.C.
and Island Park Homeowners Association

CERTIFICATE OF SERVICE

I do hereby certify that on the 15th of April, 1998, a true, correct and exact copy of the above and foregoing document was served by placing same in the United States mail, with proper postage thereon duly prepaid, addressed as follows:

Patick J. Malloy, III
Malloy & Malloy
1924 S. Utica, Ste 810
Tulsa, OK 74104-6515

/s/ Sidney K. Swinson
Sidney K. Swinson

APPENDIX "C"

THE ORIGINAL PETITION

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY, STATE OF OKLAHOMA

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OF ISLAND PARK, AN OKLAHOMA UNIT OWNERSHIP ESTATE, ISLAND PARK LIMITED, AN OKLAHOMA LIMITED PARTNERSHIP, CORLETT ENTERPRISESM, LLC, AN OKLAHOMA LIMTED LIABILITY COMPANY, AND CLIFF WOODBURY,	)	**FILED** **JUNE 05 1998** **JUDY E. LARMON** **DELAWARE COUNTY COURT CLERK**
Plaintiffs,	)	
vs.	)	
WENDELL D. BELDEN,	)	No. CV-98-222
Defendant.	)	

PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

COME NOW Plaintiffs, and for their cause of action against the Defendant herein named, allege and state:

I

That the Plaintiffs, Island Park Limited, an Oklahoma Limited Partnership, and Corlett Enterprises, L.L.C., and Oklahoma Limited Liability Company, are the owners of and are in actual, open, peaceable possession of the following described real property, to wit:

Part of the NW/4 NE/4 of Section 16, Township 24 North, Range 23 East of the I.B.M., Delaware County, Oklahoma being more particularly described as follows: From the NE corner of said NW/4 NE/4 run S. 89° 50' 00" W. 1085.25 feet along the North line of said NW/4 NE/4; thence South 16.50 feet to a found iron pin, being the point of beginning; thence S. 89° 50' 00" W. 120.66 feet to the G.R.D.A. Taking Line; thence S. 66° 38' 00" W. 114.01 feet along said Taking Line to a found iron pin on the West line of said NW/4 NE/4; thence S. 00° 03' 52" W. 622.52 feet leaving said Taking Line along said West line to a point on said Taking Line; thence N. 52° 24' 00" E. 48.75 feet along said Taking Line; thence N. 00° 16' 00" E. 209.87 feet leaving said Taking Line; thence S. 89° 32' 07" W. 19.04 feet; thence North 77.50 feet to a found iron pin; thence 189.12 feet along a curve to the right with a radius of 155.00 feet and a chord of N. 35° 03' 14" E. 177.60 feet to a found iron pin; thence 113.65 feet along a curve to the right with a radius of 358.00 feet and a chord of N. 79° 06' 08" E. 113.17 feet to the point of beginning. Containing 0.52 acres, more or less. Being subject to any and all easements of record. LESS AND EXCEPT: Part of the NW/4 NE/4 of said Section 16, Township 24 North, Range 23 East, being more particularly described as follows: From the NE corner of said NW/4 NE/4 run South 539.69 feet; thence West 1302.30 feet to the point of beginning; thence West 18.30 feet to the West line of said NW/4 NE/4; thence S. 00° 03' 03" W. 151.13 feet along said West line to the G.R.D.A Taking Line; thence N. 55° 24' E. 27.43 feet along said Taking Line; thence N. 03° 22' 23" W. 97.11 feet leaving said Taking Line; thence N. 02° 23' 03" E. 38.64 feet to the point of beginning. Containing 0.06 acres, more or less. Being subject to any and all easements of record.

II

That the Council of Unit Owners of Island Park has an interest in that part of the above described real property which constitutes common elements of the Unit Ownership Estate, as well as the traveling public.

III

That the Defendant named in the caption of this Petition, Wendell D. Belden, claims some right, title, lien, estate, encumbrance, claim, assessment or interest in and to the real property herein described, adverse to the Plaintiffs, which constitutes a cloud on Plaintiffs' title and said Defendant has no right, title, lien, estate, encumbrance, claim, assessment or interest either in law or in equity in and to the real property involved herein, and title to said real property should be quieted in said Plaintiffs, and said Defendant, and every person claiming by, through or under him should be forever barred, foreclosed and enjoined from hereafter asserting any claim of right, title, interest, lien or estate in said real property adverse to the said Plaintiffs.

IV

That Plaintiffs and their predecessors in title have been in actual, continuous, hostile, open, notorious and exclusive possession of the real property herein described for a period of more than fifteen (15) years prior to the filing of this Petition and during such time Plaintiffs have improved and maintained the property and exercised complete and exclusive dominion and control over the premises, paying all taxes thereon and receiving all profits therefrom and said Plaintiffs are now the owners of said property, not only the record title but also by prescription, and the claims of all persons in and against this real property

of some right , title, interest, lien, encumbrance, estate or claim is now barred by the Statute of Limitations and the Prescription Laws of the State of Oklahoma and title to the above described real property should be quieted in said Plaintiffs.

V

That the Plaintiffs hereby make application for a temporary Order enjoining and restraining the Defendant, Wendell D. Belden, and those persons acting by, through or under him, from making any improvements on or attaching anything to the subject premises, and from interfering with other persons' use of same for ingress and egress. Plaintiffs further allege that they have no adequate remedy at law, and that irreparable harm will result if Defendant is not enjoined and restrained as set forth above.

WHEREFORE, Plaintiffs pray that the fee simple title in and to said real property herein described be quieted in the Plaintiffs, Island Park Limited, an Oklahoma Limited Partnership, and Corlett Enterprises, L.L.C., an Oklahoma Limited Liability Company; that this Court enter its Order enjoining and restraining the Defendant, Wendell D. Belden, from making any improvements on or attaching anything to the subject premises, and from interfering with other person' use of same for ingress and egress; that the Defendant named herein be required to set up in this action any right, title, interest or claim that he might have in and to said real property herein described; that the Defendant named in the caption hereof be forever barred, foreclosed and enjoined from hereafter asserting any right, interest or estate in said premises adverse to the said Plaintiffs; for further decree establishing Plaintiffs' title as shown herein, as merchantable, both by record and by adverse possession and forever barring the Defendant and all

persons claiming by, though or under him or any of them from ever claiming or asserting any right, title, interest, lien or estate in and to said premises; and for all such other and further relief as Plaintiffs may in law and equity be entitled to receive.

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, AN OKLAHOMA UNIT OWNERSHIP ESTATE, ISLAND PARK LIMITED, AN OKLAHOMA LIMITED PARTNERSHIP, AND CORLETT ENTERPRISES, L.L.C., AN OKLAHOMA LIMITED LIABILITY COMPANY, Plaintiffs

By: /s/ Richard D. James
RICHARD D. JAMES, OBA #4617
W. NEIL WILSON, OBA #9753
Attorneys for Plaintiffs
WALLACE, OWENS, LANDERS, GEE, MORROW, WILSON, WATSON & JAMES
P.O. Box 1018
Jay, Oklahoma 74346
(918) 253-6208

VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF DELAWARE) SS.

Richard D. James, being first duly sworn upon oath, states: That he is one of the attorneys for Plaintiffs herein and is authorized to make this Verification on their behalf; that the documents upon which Plaintiffs' Petition is based are in the possession

of said attorney; that he has read the above and foregoing Petition and is familiar with the contents thereof; and that the matters set for the therein are true and correct, to the best of his information, knowledge and belief.

/s/ Richard D. James
Richard D. James

Subscribed and sworn to before me this 5th day of June, 1998.

/s/Martha L. Robinson
NOTARY PUBLIC

My commission expires:
9-25-2001

APPENDIX "D"

THE AMENDED PETITION

IN THE DISTRICT COURT IN AND FOR DELAWARE COUNTY, STATE OF OKLAHOMA

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OF ISLAND PARK, AN OKLAHOMA UNIT OWNERSHIP ESTATE, ISLAND PARK LIMITED, AN OKLAHOMA LIMITED PARTNERSHIP, CORLETT ENTERPRISESM, LLC, AN OKLAHOMA LIMTED LIABILITY COMPANY, AND CLIFF WOODBURY,	)	**FILED JULY 16 1999 CAROLINE M. WEAVER DELAWARE COUNTY COURT CLERK**
Plaintiffs,	)	
vs.	)	
WENDELL D. BELDEN,	)	No. CV-98-222
Defendant.	)	

AMENDED PETITION

COME NOW Plaintiffs, and for their cause of action against the Defendant herein named, allege and state:

I

That the Plaintiffs, Island Park Limited, an Oklahoma Limited Partnership, and Corlett Enterprises, L.L.C., and Oklahoma Limited Liability Company, are the owners of and are in actual, open, peaceable possession of the following described real property, to wit:

Part of the NW/4 NE/4 of Section 16, Township 24 North, Range 23 East of the I.B.M., Delaware County, Oklahoma being more particularly described as follows: From the NE corner of said NW/4 NE/4 run S. 89° 50' 00" W. 1085.25 feet along the North line of said NW/4 NE/4; thence South 16.50 feet to a found iron pin, being the point of beginning; thence S. 89° 50' 00" W. 120.66 feet to the G.R.D.A. Taking Line; thence S. 66° 38' 00" W. 114.01 feet along said Taking Line to a found iron pin on the West line of said NW/4 NE/4; thence S. 00° 03' 52" W. 622.52 feet leaving said Taking Line along said West line to a point on said Taking Line; thence N. 52° 24' 00" E. 48.75 feet along said Taking Line; thence N. 00° 16' 00" E. 209.87 feet leaving said Taking Line; thence S. 89° 32' 07" W. 19.04 feet; thence North 77.50 feet to a found iron pin; thence 189.12 feet along a curve to the right with a radius of 155.00 feet and a chord of N. 35° 03' 14" E. 177.60 feet to a found iron pin; thence 113.65 feet along a curve to the right with a radius of 358.00 feet and a chord of N. 79° 06' 08" E. 113.17 feet to the point of beginning. Containing 0.52 acres, more or less. Being subject to any and all easements of record. LESS AND EXCEPT: Part of the NW/4 NE/4 of said Section 16, Township 24 North, Range 23 East, being more particularly described as follows: From the NE corner of said NW/4 NE/4 run South 539.69 feet; thence West 1302.30 feet to the point of beginning; thence West 18.30 feet to the West line of said NW/4 NE/4; thence S. 00° 03' 03" W. 151.13 feet along said West line to the G.R.D.A Taking Line; thence N. 55° 24' E. 27.43 feet along said Taking Line; thence N. 03° 22' 23" W. 97.11 feet leaving said Taking Line; thence N. 02° 23' 03" E. 38.64 feet to the point of beginning. Containing 0.06 acres, more or less. Being subject to any and all easements of record.

II

That the Council of Unit Owners of Island Park has an interest in that part of the above described real property which constitutes common elements of the Unit Ownership Estate, as well as the traveling public.

III

That the above described real estate and premises were formerly owned by Charles J. Davis and Isla B. Davis, husband and wife, and intended to be conveyed as part of the real estate and premises described in the warranty deed recorded in Book 327 at Page 219 of the records of the County Clerk of Delaware County, Oklahoma, whereby the said Charles J. Davis and Isla B. Davis, husband and wife, conveyed to Leroy Ebling, predecessor in title of Plaintiffs herein. That through scrivener's error, the real estate and premises which were the subject matter of such conveyance were incorrectly described and that said deed, and any other conveyances from Charles J. Davis and Isla B. Davis to Plaintiffs or their predecessors in title, should be reformed consistent with the intent of the parties thereto, to include the real estate and premises described in Paragraph I above.

IV

That the Defendant named in the caption of this Petition, Wendell D. Belden, claims some right, title, lien, estate, encumbrance, claim, assessment or interest in and to the real property herein described, adverse to the Plaintiffs, which constitutes a cloud on Plaintiffs' title and said Defendant has no right, title, lien, estate, encumbrance, claim, assessment or interest either in law or in equity in and to the real property involved herein, and title to said real property

should be quieted in said Plaintiffs, and said Defendant, and every person claiming by, through or under him should be forever barred, foreclosed and enjoined from hereafter asserting any claim of right, title, interest, lien or estate in said real property adverse to the said Plaintiffs.

V

That Plaintiffs and their predecessors in title have been in actual, continuous, hostile, open, notorious and exclusive possession of the real property herein described for a period of more than fifteen (15) years prior to the filing of this Petition and during such time Plaintiffs have improved and maintained the property and exercised complete and exclusive dominion and control over the premises, paying all taxes thereon and receiving all profits therefrom and said Plaintiffs are now the owners of said property, not only the record title but also by prescription, and the claims of all persons in and against this real property of some right , title, interest, lien, encumbrance, estate or claim is now barred by the Statute of Limitations and the Prescription Laws of the State of Oklahoma and title to the above described real property should be quieted in said Plaintiffs.

VI

That the Plaintiffs hereby make application for a temporary Order enjoining and restraining the Defendant, Wendell D. Belden, and those persons acting by, through or under him, form making any improvements on or attaching anything to the subject premises, and from interfering with other person' use of same for ingress and egress. Plaintiffs further allege that they have no adequate remedy at law, and that irreparable harm will result if Defendant is not enjoined and restrained as set forth above.

WHEREFORE, Plaintiffs pray that the fee simple title in and to said real property herein described be quieted in the Plaintiffs, Island Park Limited, an Oklahoma Limited Partnership, and Corlett Enterprises, L.L.C., an Oklahoma Limited Liability Company; that the conveyances from Charles J. Davis and Isla B.Davis to Plaintiffs and their predecessors in title be reformed to properly reflect the intent of the parties thereto; that the Defendant named herein be required to set up in this action any right, title, interest or claim that he might have in and to said real property herein described; that the Defendant named in the caption hereof be forever barred, foreclosed and enjoined from hereafter asserting any right, interest or estate in said premises adverse to the said Plaintiffs; for further decree establishing Plaintiffs' title as shown herein, as merchantable, both by record and by adverse possession and forever barring the Defendant and all persons claiming by, though or under him or any of them from ever claiming or asserting any right, title, interest, lien or estate in and to said premises; and for all such other and further relief as Plaintiffs may in law and equity be entitled to receive.

THE BOARD OF DIRECTORS OF THE COUNCIL OF UNIT OWNERS OF ISLAND PARK, AN OKLAHOMA UNIT OWNERSHIP ESTATE, ISLAND PARK LIMITED, AN OKLAHOMA LIMITED PARTNERSHIP, AND CORLETT ENTERPRISES, L.L.C., AN OKLAHOMA LIMITED LIABILITY COMPANY, Plaintiffs

By: /s/ Richard D. James
RICHARD D. JAMES, OBA #4617
W. NEIL WILSON, OBA #9753
Attorneys for Plaintiffs
WALLACE, OWENS, LANDERS,
GEE, MORROW, WILSON,
WATSON & JAMES
P.O. Box 1018
Jay, Oklahoma 74346
(918) 253-6208

VERIFICATION

STATE OF OKLAHOMA)
)
COUNTY OF DELAWARE) SS.

Richard D. James, being first duly sworn upon oath, states: That he is one of the attorneys for Plaintiffs herein and is authorized to make this Verification on their behalf; that the documents upon which Plaintiffs' Petition is based are in the possession of said attorney; that he has read the above and foregoing Petition and is familiar with the contents thereof; and that the matters set for the therein are true and correct, to the best of his information, knowledge and belief.

/s/ Richard D. James
Richard D. James

Subscribed and sworn to before me this 7th day of July, 1999.

/s/Martha L. Robinson
NOTARY PUBLIC

My commission expires:
9-25-2001